

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DAVID C. MARCHESE : CHAPTER 7
Debtor : CASE NO. 16-13810-elf

DAVID C. MARCHESE : NOTICE OF REMOVAL
Plaintiff : Removed from:
v. : Court of Common Pleas of
HOPWOOD FARM, LLC et al : Montgomery County
Defendants : NO. 2012-28320

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1446 and 1452, and Rule 9027 of the Federal Rules of Bankruptcy Procedure, the Chapter 7 Trustee, Gary Seitz, hereby removes the above-captioned civil action, and all claims and causes of action therein, from the Court of Common Pleas of Montgomery County, Pennsylvania, to the United States Bankruptcy Court for the Eastern District of Pennsylvania. The Trustee states as follows:

1. On or about November 18, 2005, the Plaintiff David Marchese (“Marchese”), and defendants James McCauley (“McCauley”), Gerald Mullaney, Martin Mullaney (collectively, the “Mullanneys”) and Paul Newlin (“Newlin”) executed a Limited Liability Operating Agreement in Hopwood Farm, LLC (“Hopwood).

2. Marchese contributed \$691, 000 as a capital contribution in Hopwood and McCauley contributed \$182,895.65. No other member made any capital contribution.

3. Marchese owned a 50% interest in Hopwood, McCauley 12.5% ,

Mullaneys 25% , and Newlin 12.5%.

4. The purpose of Hopwood was to own property at 172 Hopwood Road for the principal purpose of developing the property into 12 single-family homes (“Hopwood Property”).

5. On or about December 15, 2005, Gerald Mullaney executed a Note and Mortgage in the amount of \$1,235,000, and Hopwood purchased the Hopwood Property for \$1,900,000.

6. Sometime in 2011, the Mullaneys and McCauley negotiated a side-deal so that the Mullaneys could be relieved of their personal guarantees for the \$1,235,000 loan.

7. Accordingly, the Mullaneys transferred their membership interests in Hopwood to McCauley despite the restrictions in Article 7 of the LLC agreement. No consent was executed by Marchese for the transfer.

8. After the shares were transferred and McCauley became Manager of Hopwood, McCauley purchased the Note from the lender, and then filed a Complaint in Foreclosure in the Court of Common Pleas of Montgomery County on September 6, 2012.

9. Service of the Foreclosure Complaint was accepted by Gerald Mullaney, who failed and/or refused to defend the foreclosure to the detriment of, *inter alia*, Marchese.

10. As a result, McCauley ended up with Marchese’s capital contribution of \$691,000 and sole possession of the Hopwood Property.

11. On January 4, 2013, Marchese filed an Amended Complaint in the Court of Common Pleas of Montgomery County against McCauley and Hopwood. The

Amended Complaint had three counts; a) Breach of Fiduciary Duty, b) Breach of Contract, and c) Breach of 15 Pa. C.S.A. §8321 *et seq.* **Exhibit “A”.**

12. This Court has jurisdiction over this matter and this action may be removed to this Court by the Trustee pursuant to 28 U.S.C. §1452(a), because this lawsuit is “related to” Debtor’s pending bankruptcy proceeding.

13. Removal is made directly to this Court under 28 U.S.C. § 157(b)(2).

14. This is a core proceeding.

15. The Trustee will promptly serve a copy of this Notice on counsel for Defendants and will file a copy of this Notice with the Prothonotary for the Court of Common Pleas of Montgomery County, Pennsylvania pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, pursuant to 28 U.S.C. §§1446 and 1452, and Rule 9027 of the Federal Rules of Bankruptcy Procedure, the Chapter 7 Trustee, Gary Seitz, removes this action in its entirety from the Court of Common Pleas of Montgomery County, Pennsylvania to this Court.



Dated: July 3, 2017

Robert J. Birch, Esquire
ID. 65816
617 Swede Street
Norristown, PA 19401
610-277-9700

CERTIFICATE OF SERVICE

I, Robert J. Birch, Esquire, hereby certify that on this 3rd day of July, 2017, I served a true and correct copy of the Notice of Removal to the following:

George Saba, Esquire
Law Offices of George E. Saba, Jr., LLC
1800 Pennbrook Parkway, Suite 201
Lansdale, PA 19446



ROBERT J. BIRCH, ESQUIRE